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Date: 04/09/2024

Dias, Liyanagamage Ranganath Prabashwara

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University of Rochester

Total Fees Paid: $0.00

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JAMIE ROMEO

MONROE COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF MONROE

In the matter of the Application of LIYANAGAMAGE RANGANATH PRABASHWARA DIAS, Petitioner,	Index No.: 2024003035
-against-	Hon. Joseph D. Waldorf
UNIVERSITY OF ROCHESTER, Respondent.	**AFFIDAVIT OF LIYANAGAMAGE RANGANATH PRABASHWARA DIAS IN REPLY**
For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules	

The undersigned affiant, Liyanagamage Ranganath Prabashwara Dias ("petitioner"), being duly sworn, hereby deposes and says:

1. To my knowledge, all of the facts stated in this affidavit are true and correct.

2. I am over 18 years of age. I reside in Monroe County. I am fully competent to make this affidavit and I have personal knowledge of the facts stated in this affidavit.

3. I am the petitioner in this case.

4. I am employed by the University of Rochester (hereinafter "the University"). A full and accurate copy of the University's offers of employment with the University are included at Exhibit A.

5. As a scientific researcher, academic, and co-founder of a business related to my research, Unearthly Materials, within this field my livelihood is my business, and significantly depends on my professional resume and ventures.

6. I bring this article 78 petition in response to my employer, the University of Rochester's failure to follow its own policies and procedures and to provide me the due process it promises in connection with its prejudicial, biased and unfair investigation into allegations of research misconduct (hereinafter "the Investigation").

7. I urge this court to intervene and require the University to follow the Research Misconduct Policy and Faculty Grievance Procedures contained in the University's Faculty Handbook (hereinafter "the Handbook").

8. As it acknowledges, the University has two versions of the Research Misconduct Policy which apply to faculty. *See* NYSCEF doc. 53, Dewhurst Affirm., at ¶13.

9. I understand the University has asserted the policy available online is the controlling policy. I do not agree with this assessment given the Handbook's clear statement that it "sets forth policies, procedures, and information that, by common consent, are those governing the University faculty as a whole." Doc. 7, pg. 4. The Handbook explicitly articulates which University policies may supersede the Handbook policies. The Research Misconduct Policy is not one of them. *Id*.

10. Upon my learning of the University concluding its Investigation despite my pending request for a temporary restraining order, I filed a second proposed order requesting: a temporary restraining order prohibiting the respondent from allowing utilizing any University Committee on Tenure and Privileges proceeding related to the termination of my employment until Respondent properly adjudicates my grievances, and all appeals processes related to those grievances have been exercised. *See* docs. 28 through 35 incorporated to this affidavit by reference.

11. I am a faculty member eligible to vote in Faculty Senate elections and as such am afforded use of the Faculty Grievance Procedures outlined in the Faculty Handbook. A full and accurate copy of the Faculty Handbook is included in doc. 7 and incorporated by reference into this affidavit.

12. I filed several grievances about the University's actions pursuant to the General Grievance Procedure articulated on page 41 in the Faculty Handbook.

13. My first grievance (Grievance 1) was filed on August 7, 2023 and pertained to Dean Wendi Heinzelman's and the University's unilateral decision to remove all my students from my teaching, advising, and mentoring, in violation of my academic freedoms. This action was premature and resulted in bias and prejudice during the investigation.

14. A full account of the facts related to this grievance can be found in my verified petition and its attached exhibits, including my previously filed affidavit and all its accompanying exhibits (docs. 1 through 21 and incorporated by reference into this affidavit).

15. After denying me the right to a grievance committee hearing related to Grievance 1, on December 13, 2023, I filed a previous article 78 petition (Index No. E2023014993) in the Supreme Court for the County of Monroe, requesting the court intervene to force the University to follow its policies and establish a grievance committee to redress the unilateral removal of students from my teaching, advising, and mentoring responsibilities.

16. On February 14, 2024, I filed this Article 78, along with a request for a Temporary Restraining Order (TRO) prohibiting the University from concluding its investigation process until my grievance was addressed. The full details of this filing are included in the documents 1 through 27 and incorporated by reference into this affidavit.

17. Also on February 14, 2024, I received a letter from Dean Heinzelman informing me that Provost Figlio had received, read, and considered the Investigation Committee's final report, including my comments to the draft investigation report and had accepted the Committee's findings and conclusions. Dean Heinzelman further notified me the University was considering certain corrective actions which would be communicated to me at a later date. A true and accurate copy of this correspondence is included at doc. 21 and incorporated by reference into this affidavit.

18. On January 15, 2024, Dr. Jane Liesveld, Chair of the University Committee on Tenure and Promotion (UCTP), notified me that Grievance 1 did now warrant a hearing committee. A true and accurate copy of this email is included at doc. 30 and incorporated by reference into this affidavit.

19. On February 15, 2024, I submitted another grievance (Grievance 2) to Dr. Liesveld, titled "additional grievance". A true and accurate copy of this grievance is included at doc. 32 and incorporated by reference into this affidavit.

20. On February 22, 2024, Ms. Carly Howlett, Administrator for the Office of the Faculty Senate, notified me that I could participate in an interview with the grievance committee on a non-specified Friday between 3-4PM. A full and accurate copy of this correspondence is included at doc. 34 and incorporated by reference into this affidavit.

21. On February 23, 2023, I submitted to the NSF, a Sur-Reply to the Investigation Committee's report. A full and accurate copy of this document is included at Exhibit B.

22. Despite my filing this article 78 with a request for a temporary restraining order prohibiting the University from concluding the Investigation on February 14, 2024, the University finalized the Investigation process on February 26, 2024, before the court decided on the request[1] on February (*see* NYSCEF doc. 38) with the provost's acceptance of the Investigation Committee's findings and a referral to the UCTP (*see* doc. 35 incorporated by reference into this affidavit).

23. The Investigation is now final; there are no further steps in the process. *See* doc. 7, pg. 60.

24. Dr. Figlio further informed me that he was referring my case to the UCTP "for potential removal prior to the end of the period for which [I was] appointed and termination of [my] employment by the Board of Trustees for academic cause." Doc. 35.

25. This letter from Provost Figlio states,

With respect to your noted concerns about possible conflicts of interest, I requested and received an explanation of the University's response to that concern on February 13, 2024. I am satisfied there was no conflict of interest and I accepted the Investigation Committee's findings of research misconduct.

26. Provost Figlio's statement ignores the UCTP's determination that a grievance committee was warranted to review my allegations of bias in the Investigation process.

27. On February 27, 2024, I wrote to the UCTP confirming my two grievances and confirming that Provost Figlio was the subject of both grievances. I requested information regarding the status of the research misconduct investigation grievance. A true and accurate copy of this correspondence is included at Exhibit C.

[1] Despite my requesting oral argument, the court made its determination on this TRO without providing the opportunity to do so.

28. Despite this grievance alleging Provost Figlio was intentionally delaying the adjudication of my prior grievance, on February 28, 2024, Dr. Liesveld informed me, for the first time, that the UCTP was not recognizing my research misconduct investigation grievance because it had to be submitted to Provost Figlio first. A true and accurate copy of this correspondence is included at Exhibit C.

29. On February 29, 2024, I submitted Grievance 2 to Provost Figlio. A true and accurate copy of this correspondence is included at Exhibit D. On March 1, 2024, Provost Figlio acknowledged receipt of Grievance 2. A true and accurate copy of this correspondence is included at Exhibit D.

30. Also on March 1, 2024, the UCTP confirmed receipt of Grievance 2 and noted they are waiting for Provost Figlio, the subject Grievance 2, to respond. Attached hereto as Exhibit E is a copy of the UCTP's email communication.

31. On March 7, 2024, the Office of the Faculty Senate informed me a Faculty Grievance Committee had been formed for Grievance 1 and had begun analyzing the documents provided. The Committee requested I provide various documents and information. Attached hereto as Exhibit F is a copy of the Office of the Faculty Senate's email communication.

32. On March 12, 2024, I sent the UCTP a pre-Interview Statement in anticipation of a grievance being held, as promised. Attached hereto as Exhibit G is this pre-Interview Statement. I have heard nothing further from the University regarding its progress towards resolving Grievance 1.

33. On March 18, 2024, Dr. Liesveld informed me that Grievance 2 would be "placed on hold" until the conclusion of the UCTP determination in the contract abrogation proceeding. A full and accurate copy of this correspondence is included at Exhibit H.

34. The rationale given for the UCTP's decision to place my Grievance 2 "on hold" was that a document was unsealed in this Article 78 proceeding.

35. It is unclear why any activity in my Article 78 proceeding seeking to enforce the rights afforded to me pursuant to the Faculty Grievance Procedure would prevent the University from following its Faculty Grievance Procedures.

36. I believe the University's statement to continue its obligatory Faculty Grievance Procedures further demonstrates the University administration's desire to conclude its Investigation without any review from its faculty or that the University is retaliating against me for asserting my rights by further refusing those very same rights. I believe the University's statement that it will not continue its obligatory Faculty Grievance Procedures because of my Article 78 proceeding, further demonstrates:

a) the University administration's desire to conclude the Investigation without any review from its faculty, and/or

b) that the University is retaliating against me for asserting my rights by further

refusing those very same rights.

37. This act of retaliation is a further violation of my academic freedom as articulated in the Statement of Principles of Academic Freedom and Tenure adopted by the Association of American University Professors and the Association of American Colleges in 1940 and incorporated into the Handbook which promises that when faculty "speak or write as participants in civil society, they should be free from institutional censorship or discipline." Doc. 7, pg. 38.

38. Additionally, as **the purpose of Grievance 2 was to obtain a review of the fairness of the Investigation process**, and because **the UCTP does not have the authority in the contract abrogation proceeding to evaluate the fairness of the Investigation Committee's findings**, waiting until the UCTP finishes the contract abrogation process eliminates any opportunity I have to utilize the grievance procedures promised to me in the Handbook.

39. The practical effect of placing Grievance 2 "on hold" is that Grievance 2 will never be heard.

40. In light of Dr. Liesveld's notice regarding Grievance 2, on March 19, 2024, I sent to the Faculty Grievance Committee a request that Grievance 1 and Grievance 2 be merged and consolidated as they are related and interconnected. A full and accurate copy of this correspondence is included at Exhibit I.

41. Both grievances illuminate a concerning lack of procedural fairness and due process in the University's response to my concerns. The initial grievance criticizes the procedural route that permitted my concerns to be dismissed at the provost level without the involvement of a faculty grievance committee, despite clear implications for academic freedom. The subsequent grievance further underscores this issue, revealing delay tactics and conflicts of interest in the management of both my original grievance and the research misconduct investigation.

42. On March 24, 2024, Dr. Liesveld informed that that the University determined to put both Grievance 1 and Grievance 2 "on hold" pending the outcome of the UCTP termination process. A full and accurate copy of this correspondence is included at Exhibit J.

43. The hearing procedures for UCTP termination process Provost Figlio has referred me to are described in Section IV.D of the Handbook.

44. **The hearing procedures do not provide me (or the UCTP) an opportunity to challenge, in any way, the fairness of the Investigation**.

45. The UCTP must accept the Investigation Committee's findings, meaning **the only opportunity I have to introduce evidence of bias in the Investigation to anyone outside the Investigation is through the Faculty Grievance Procedures, procedures the University is refusing to allow me to utilize**.

46. I understand Provost Figlio has indicated in the University response to this Article 78 that the University's failure to follow the Policy's requirement that University of Rochester faculty members serve on the Committee was because there were no University of Rochester faculty

members with the requisite experience to do so. This is not accurate.

47. There are a number of University of Rochester faculty members qualified to serve on the Investigation Committee. I have included a list of ten (10) such current faculty members with a description of their expertise at Exhibit K.

Cooperating with the Investigation & Noting My Concerns of Bias

48. I further understand the University has asserted I was uncooperative in the Investigation. This is also false.

49. I provided all information and materials the Investigation Committee requested in a timely manner.

50. I met with the RMI Committee via zoom on June 9, 2023. *See* doc. 16.

51. I met with the Investigation Committee via zoom on June 9, 2023. *See* doc. 16.

52. Less than 48 hours before the June 9, 2023 meeting Vice President Dewhurst requested additional information and data. I replied to his request explaining that some of the information requested did not exist and was therefore unable to be produced. I further assured the Committee that I was not withholding any information and wanted Vice President Dewhurst and the Committee to be fully aware that I was cooperating transparently and to the best of my abilities. I requested that I be informed "if there [were] any doubts or concerns to the contrary, so that we may address them appropriately and clarify any misunderstandings." A full and accurate copy of my correspondence with Vice President Dewhurst related to this meeting is included in Exhibit L.

53. On June 16, 2023, I provided a robust written response to the Investigation Committee responding to its requests for information. A full and accurate copy of this correspondence in included at Exhibit M.

54. In this letter, I requested the Investigation Committee access materials shared with NSF's March 16, 2023 letter.

55. I also noted I had shared supplemental information on or about June 8, 2023, and that some of the information requested is in the public record.

56. With this June 16, 2023 letter I shared the full list of my students and the location of all the data requested by the Committee.

57. As I sent a full list of my students, I expected the Committee would interview all students on the list. I further explained that while the Committee had characterized some of its data requests as "second requests", I had previously provided the requested materials on June 3, 2023.

58. Contrary to the University's characterizations, I expressed concerns about the partiality of the Investigation Committee for the first time on July 8, 2023, less than one month after my first meeting with the Committee and not on October 14, 2023, as the University has claimed in this

Article 78 proceeding. Contrary to the University's characterizations (*see* doc. 53, ¶¶74-81) ***I expressed concerns about the partiality of the*** Investigation ***Committee for the first time on July 8, 2023***, less than one month after my first meeting with the Committee and not on October 14, 2023, as the University has claimed.

59. On July 8, 2023, I met with Vice President Dewhurst to express my concerns that the Investigation Committee may be biased against me. I have included the Zoom meeting invitation I sent to Vice President Dewhurst for this conversation at Exhibit N and the PowerPoint presentation I reviewed with Vice President Dewhurst at Exhibit O.

60. On July 14, 2023, I met again with the Investigation Committee. During this meeting it became clear to me that the Investigation Committee was not approaching its duties with the impartiality promised by the Policy and necessary for NSF, but rather had predetermined conclusions that I had engaged in misconduct. I sent a message to Vice President Dewhurst regarding these concerns after the meeting concluded. A full and accurate copy of this correspondence in included at Exhibit P.

61. On August 9, 2023, VP Dewhurst informed me that the Investigation Committee had requested and been granted access to "certain UR email accounts and documentation held on UR systems to determine whether these accounts and documentation include any materials responsive to the investigation" and that my UR email account would be reviewed. A full and accurate copy of correspondence related to the University's review of my emails is included at Exhibit Q.

62. It was my understanding that as of this date the Investigation Committee had access to every file in my possession related to the issue it was investigating because every file is stored on University computers.

63. It was my understanding that as of this date the Investigation Committee had access to every file in my possession related to the issue it was investigating as every file is stored on University computers.

64. Once again, in August 2023 I welcomed Vice President Dewhurst on behalf of the Committee to image additional computers in my lab, despite the fact that computers had already been imaged. A full and accurate copy of correspondence related to my cooperation with this process is included at Exhibit R.

65. On August 24, 2023, Vice President Dewhurst even noted to me that the individual who was assigned to image the computers had remarked on my helpfulness in providing them access to the materials and information requested. A full and accurate copy of a text message from Vice President Dewhurst related to my cooperation with this process is included at Exhibit S.

The University's Refusal to Consider Relevant Evidence & Determination to Rely on Biased Witnesses

66. In this Article 78 proceeding the University has admitted it chose to interview only nine select individuals involved in the research in question (*see* doc. 53 ¶59) and states it based its

decisions regarding who to interview on the order authors were listed in publications regarding the work (*see* doc. 53 ¶64).

67. The University's interviewing of Sachith E Dissanayake belies this claim, given he was listed after Mr. Nugzari Khalvashi-Sutter and Mr. Sasanka Munasinghe and yet neither were interviewed by the Investigation Committee.

68. The University's failure to interview Mr. Kahlvashi-Sutter, or Mr. Sasanka Munasinghe is critical to this issue as these are the individuals who actually took the measurements for the research in question.

69. Mr. Khalvashi-Sutter has been a key member of my research group since 2020. Mr. Khalvashi-Sutter's proficiency in understanding electrical resistance measurements and magnetic susceptibility measurements at high pressures (techniques are critical for identifying superconducting materials) is unparalleled. Mr. Khalvashi-Sutter played a pivotal role in designing, implementing, and conducting the majority of the electrical resistance and susceptibility measurements for the Lu-H-N paper. He conducted experiments on various known superconductors to delve into the high-pressure behaviors of these measurements, which are notoriously challenging.

70. Mr. Munasinghe has a profound understanding of measurement instruments, such as lock-in amplifiers and his knowledge in electrical resistance measurements, along with his ability to interpret and understand complex data, is exceptional. Mr. Munasinghe has proven to be an innovator in my lab, displaying complete independence, creativity, and the initiative to enhance complex measurement techniques with various anomalies.

71. Instead of interviewing Mr. Khalvashi-Sutter and Mr. Munasignhe, the University heavily relied upon graduate student Mr. John Smith[2]. Mr. Smith struggled with fundamental concepts such as the four-probe technique for eliminating contact resistance, a principle typically introduced in high school physics. Additionally, his understanding of using a Source Measure Unit (SMU) and a multimeter for resistance measurements was lacking, and he found the concept of impedance particularly difficult. Mr. Smith has not conducted magnetic susceptibility measurements and faced difficulties in performing electrical resistance measurements under pressure. Ultimately Mr. Smith was removed from the superconductivity project due to his lack of understanding and deficiencies in experimental capabilities.

72. Despite his lack of proficiency in this subject area, the Investigation Committee not only took Mr. Smith's testimony but relied upon him to determine the relevancy of evidence.

73. The University's rationale for doing so was that Mr. Kahlvashi-Sutter and Mr. Munasinghe were not listed as important authors on the article in question. *See* doc. 53 ¶64. It is, however, important to note that these two students also refused to sign the letter prepared by the University requesting a retraction of the *Nature* paper and in doing so made clear to the University that they did not agree with its preconceived determination the research was unsound.

[2] Pursuant to my FERPA obligations, petitioner is using a pseudonym for this individual.

74. Additionally, the University attempts in this Article 78 proceeding to explain its deviation from the Policy in writing a letter requesting retraction of the *Nature* article before the Investigation was concluded as "consistent with its duty to correct the scientific record." Doc. 53 ¶70.

75. The Policy explicitly states that "***If*** the committee finds that there was misconduct the dean will: a. Direct the department chair or laboratory director to notify the editors of publications to which abstracts and papers relevant to the misconduct have been submitted and request that the work be withdrawn prior to publication, or, if the work has already been published, that an appropriate retraction or correction be published." Doc. 7, pg. 59. The clear intention of this policy to only notify editors of publication ***if*** the Investigation Committee found there was misconduct.

76. I do not now object, nor have I ever objected, to the University's investigating allegations of research misconduct, I just want such an investigation to be conducted in a manner that is consistent with the University's published policies and procedures and provide me with a fair and impartial investigation.

77. Furthermore, if the University is able to continue its abrogation process without abiding by its faculty grievance policies and procedures, the University's position will be unjustly improved.

78. Pursuant to my Exclusive Patent License Agreement with the University, the University retains the rights to my intellectual property upon my termination. Not only will the University be able to only financially benefit from it, but it could allow other scientists to continue my work. A true and accurate copy of this Agreement I have with the University allowing for this to occur in included at Exhibit T.

79. On one hand the University, through its Investigation, has concluded that the research data was falsified and fabricated as a pretext to terminate me while on the other hand the University continues to take steps to take the intellectual property rights related to the same very research data and the science away from me.

80. Importantly, the research findings from papers under scrutiny in this investigation have been replicated by researchers at Argonne National lab and Brookhaven National lab, underscoring the validity of our original research. The replication results were recently reported at the 2024 APS March meeting.

81. It often takes years in the scientific world for a scientist to have their results replicated by a peer. This fact underscores the need for those who have been tasked with investigating allegations of research misconduct to engage in the task carefully, thoughtfully, and impartially. Unfortunately, the Investigation Committee did not do so.

82. Unless this court intervenes, I will forever be labeled as a dishonest scientist, suffering not just harm to my reputation, the loss of my livelihood, and the ability to engage with the science I created, while the University will be free to use and financially benefit from it.

83. All I seek is the opportunity for my colleagues to evaluate the fairness of the Investigation using the Faculty Grievance Procedures. The University's interpretation of the Policy allows for this even if it were considered a "deviation" in the Policy's process. The University will suffer no harm in allowing this review to take place.

Dated: Rochester, NY
April 4, 2024

Liyanagamage Ranganath Prabashwara Dias

Subscribed and sworn to before me

This 4th day of April, 2024

JENNIFER M. LEVY
Notary Public, State of New York
Reg. No. 02LE6416051
Qualified in Monroe County
Commission Expires 04/05/2025

Notary Public
My Commission Expires: